IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/09/2002

CORAM

THE HONOURABLE MR.JUSTICE P.SHANMUGAM
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO.163 OF 1995

1. Ramalingam
2. Elumalai
3. Ayyanar .. Appellants

-VS-

State rep.by Inspector of Police,
Kottakuppam,
Aurovil Police Station,
VRP District. .. Respondent

This Criminal Appeal is preferred under S.374 of The Code of Criminal Procedure against the judgment of the learned Sessions Judge, Vizhupuram, VRP District, dated 31.1.1995 and made in S.C.44/94.

!For Appellants : Mr.S.Ashok Kumar

^For Respondent : Mr.V.M.R.Rajendran,
Additional Public Prosecutor

:JUDGMENT

M.CHOCKALINGAM, J.
The appellants, who were ranked as A-1 to A-3 in a Sessions Case, have challenged the judgment of the trial Court, wherein they were found guilty and awarded sentence as follows:

Accused Offence (I.P.C.) Sentence

A-1 323 (3 counts) Fine of Rs.50/-
for each
count,
in default to
undergo RI for
1
month

325 6 months R.I. and
a fine of Rs.50/-
in default to
undergo RI for 1
month

A-2 302 Life
Imprisonment

324, 355 No separate
sentence

A-3 323 Fine of
Rs.50/-,
in default to

undergo RI for
1
month

325 6 months R.I.
and
a fine of Rs.50/-
in default to
undergo RI for 1
month

The trial Court has acquitted A-1 to A-3 of the other charges and A-4 and A-5 of all the charges.

2. The appellants herein along with two others were charged for the offences alleging that they armed with deadly weapons, constituted into an unlawful assembly in prosecution of their common object of assaulting Krishnaveni and others have caused the death of one Karthikeyan and have also caused grievous and simple injuries to the prosecution witnesses.

3. The case of the prosecution in brief can be stated as follows:

P.W.1 Subramani, his brother the deceased Karthikeyan, P.W.2 Elumalai and P.W.3 Arjunan and their sister P.W.4 Krishnaveni, P.W.5 Murugan @ Murugesan, son-in-law of P.W.4, P.W.6 Kuppu, the wife of the deceased and the accused all were residents of Edayanchavadi. P.W.7 Rajaram is the Panchayat President of the said village. Ramu Gounder, the husband of P.W.4 and his pangali, the fourth accused had a long pending dispute over a fence. On the date of occurrence viz. 3.1.1992, P.W.6, the daughter of P.W.4 and one Ramayee, the fifth accused had a wordy quarrel over taking water from a public tank. After reaching her home, A-5 was shouting over the same. P.W.4 requested A-5 not to precipitate the same. At that time A-1 and A-2 removing the fence, trespassed into the house of P.W.4 and beat her with a chappal. In this incident, the deceased Karthikeyan who was standing nearby, questioned the act of the accused. Immediately, A-2 declared "you should be finished of", and so saying took M.O.1 chisel and attempted to attack him. P.Ws 2 and 3 intervened to stop A-2. In that process, P.Ws.2 and 3 sustained simple

injuries. A-2 attacked the said Karthikeyan and gave 4 or 5 blows with a chisel on his head. A-2 attacked the deceased on his right hand. A-2 also attacked the deceased with a stick. A-2 attacked P.Ws.2 and 3 with a stick, while A-3 attacked P.W.3 on the back and P.W.5 on the shoulder. A-1 attacked P.W.5 on his head. The deceased fell unconscious. At once, the accused fled the scene of occurrence. P.Ws.1 to 5 took Karthikeyan to Jipmer Hospital, Pondicherry. Despite treatment, Karthikeyan died at about 5.30 A.M. on 4.1.1992. P.W.2 informed the same to P.W.7 Panchayat President, who took him to one Rangasamy, a Teacher and drafted Ex.P1 complaint.

4. On 4.1.1992 at about 9.00 A.M. P.W.9 Palani, the Writer, who was in charge of Aurovil Police Station, received Ex.P1 complaint and registered a case in Crime No.4/92 under Ss 147, 323, 302 and 324 of I. P.C. Ex.P2 is the printed First Information Report. P.W.9 despatched both the documents through P.W.8 Chinnadurai, a constable to the Judicial Magistrate's Court, Vanur. Dr.Anand was the Duty Medical Officer on 3.1.1992 at about 10.20 P.M. When Karthikeyan was brought by the witnesses, the said duty Doctor admitted him and found him unconscious. Since the said Medical Officer was not in service, P.W.13 Dr. Pooranachandrarao who knew the handwriting and the signature of Dr. Anand has given evidence. The following injuries were found by Dr. Anand.

1. 2.5 x 1.5 x 1 cm laceration bone deep over right parietal region.
2. Contusion over right shoulder posterialy.

The Medicolegal examination report of Karthikeyan is marked as Ex.P9. P.W.2 Elumalai was examined and the following injuries were found.

1. Laceration 0.5 cm over the forehead.
2. 0.5 cm punctured wound over Vth intercarpel head (left)
3. Minor abrasion over ulner border of left forearm.
4. 7 x 1 cm abrasion right forearm.
5. Contusion with abrasion over right of D5 D6 spines.

Ex.P10 is the medicolegal examination report of P.W.2.

5. P.W.3 Arjunan was examined at 11.45 P.M. and the following injuries were found.

1. 0.5 x 0.5 cm laceration over the right forearm in dorsal aspect.
2. Abrasion over left knee 0.5 cm.
3. Abrasion over right II intercarpel bone 0.3 cm size.
4. Laceration 0.2 cm deep over left middle finger.

The Doctor has issued Ex.P11 Medicolegal examination report in respect of P.W.3. P.W.4 Krishnaveni was examined at 11.30 P.M. and the following injuries were found on her.

1. Contusion right chest with tenderness.

Ex.P12 is the Medicolegal examination report of P.W.4. P.W.5 Murugan was examined at 11.00 P.M. and the following injuries were found on him.

1. Minor abrasions over left parietal region 0.5 cm.
2. Contusion left shoulder.

Ex.P13 is the Medicolegal examination report of P.W.5.

6. Ex.P14 intimation was sent to Dhanvanthiri Nagar Police Station from the Hospital on 4.1.1992 regarding the death of Karthikeyan. P. W.15 Jibar Sheriff, Inspector of Police, Vanur Police Station received the copy of the F.I.R. He proceeded to the place of occurrence. At about 11.30 A.M., he inspected the spot and prepared Ex.P15 observation mahazar and Ex.P20 rough sketch. He recovered M.O.2 bloodstained earth and M.O.3 sample earth under

Ex.P16 mahazar in the presence of witnesses P.W.14 Munusamy and Thangaraj. He conducted the inquest on the dead body of Karthikeyan at the Hospital and prepared Ex.P21 inquest report. On Ex.P7 requisition from P.W.15, one Dr.Chandrasekar conducted the postmortem on the dead body of Karthikeyan. P.W.12 Dr. Atul Murai, who knew the signature of Dr.Chandrasekar has given evidence. Dr.Chandrasekar found the following external and corresponding internal injuries.

1. A lacerated wound present over the right parietal region adjacent to midline, oblique, 3 cm x ¼ cm x bone deep, seen sutured with black suturing material.
2. A lacerated wound present over the right parietal region, oblique, 1 cm. away from injury No.1. It is 2.5 cm x ¼ cm x bone deep seen sutured with black suturing material.
3. A lacerated wound present over the right parieto-temporal region, oblique, 4 cm x 0.5 cm x penetrating the temporal muscle, 1 cm deep.
4. A lacerated wound present over the scalp just above and behind the right ear, 3 cm x 0.5 cm x bone deep.
5. An abrasion present over the left parieto-temporal region 1.5 cm x 0.5 cm dark red.
6. An abrasion present over the left temporo-parietal region, 1 cm away from injury No.5 it is 1.5 cm x 1 cm in size, dark red.
7. Multiple small abrasions of varying sizes, 2 mm to ½ cm present over the left parietal region, dark red.
8. An abrasion present over the right parietal region roughly in its middle, 2 cm x 0.5 cm, dark red.
9. Multiple small abrasion of varying sizes are present over the right temporal region, 2 cm to ¼ cm, dark red.
10. An abrasion 1 cm x 0.5 cm present over the scalp just behind the left ear, dark red.
11. An abrasion present over the left side of occipital region roughly in its middle, 1 cm x 0.5 cm, dark red.
12. An abrasion present over the back part of left shoulder, 1 cm x 0 .5 cm, dark red.
13. Multiple small abrasions are present over the lower part of left side of back over an area of 10 cm x 9 cm size varying from 0.5 cm x 4 cm dark red.
14. An abrasion present over the middle of back of right upper arm, 6 cm x 4 cm, dark red.

International Examination: Head (Scalp, skull, brain, meninges and blood vessels) (Brain:M: 1400 gms/F: 1275 gms) A diffuse contusion present over the both right and left regions of scalp with effusion of blood into the temporal muscles.

Skull: The parieto-temporal suture is seen separated on the right side, 5 cm. long.

Subdural haemorrhage present over the left fronto temporal region in the form of clotted blood, 17 cm x 6 cm x 1 cm, causing compression of brain at the region.

- A diffuse subarachnoid haemorrhage present all over the left side of brain as thin film of fluid blood.

Ex.P18 is the postmortem certificate issued by Dr.Chandrasekar. The said Doctor has opined that due to the head injuries, death could have occurred.

7. At 4.00 P.M., P.W.15 examined P.W.6 and recovered M.O.4

bloodstained dhoti, M.O.5 bloodstained lunghi and M.O.6 bloodstained shirt under Ex.P17 mahazar. The Investigation Officer recorded the statements of the witnesses. On 5.1.1992 at about 1.30 P.M., he arrested A-4 and A-5. On the strength of the statement recorded from A-4, he registered a case in Crime No.5/92 under Ss 147, 323 and 324 of I.P.C. A-5 was sent to the Government Hospital, Dindivanam for treatment. A-4 and A-5 were remanded to judicial custody. On 9.1.1992 at about 6 .00 A.M., he arrested A-1 to A-3 at Kuyilapalayam Pitchandikulam bridge. Pursuant to the confessional statement given by A-2 in the presence of P.W.14 and Thangaraj, A-2 accompanied by the other accused and the witnesses, took the Investigation Officer to Edayanchavadi Mundiri Thope and produced M.O.1 Chisel, M.O.7 bloodstained reaper and M.O.8 (series) two mundiri sticks and a wooden stick, which were recovered under Ex.P19 mahazar. Those accused also were remanded to judicial custody. The Investigation Officer took up the case in Crime No.5/9 2 for investigation and recorded the statements of the witnesses. P.W.16 M.Raju, the Circle Inspector of Kottakuppam, took up further investigation. He completed the investigation in Crime No.5/92 and referred the case as 'mistake of fact' and filed a final report in Crime No.4/92 against the accused.

8. In order to prove the charges levelled against the accused, the prosecution examined 16 witnesses and marked 23 exhibits and 8 material objects. When questioned under S.313 of The Code of Criminal Procedure, the accused denied all the versions of the prosecution witnesses, but would add that they were attacked by the deceased and the prosecution witnesses; that they sustained injury, and they have also lodged a complaint in that regard. No witnesses were examined on the side of the defence. But, Exs.D1 to D8 were marked through the prosecution witnesses at the time of cross examination. After hearing the submissions of both sides and scrutiny of the available materials, the learned Sessions Judge found A-1 to A-3 guilty in respect of the charges stated above and awarded life imprisonment to A-2 while inflicting the sentence of imprisonment on A-1 and A-3 and acquitted A-1 to A-3 of the other charges and A-4 and A-5 totally. Aggrieved A-1 to A-3 have brought forth this appeal.

9. Arguing for the appellants, the learned Counsel raised the following points. The prosecution has rested its case solely on the testimonies of the interested witnesses. All the witnesses and the deceased were closely related to each other. A scrutiny of the evidence would clearly reveal that their testimonies were discrepant. No independent witness has been examined, while they were available. Admittedly, there was a group clash, in which four persons on each side were injured. The prosecution has not placed the genesis of the occurrence. On the contrary, the defence has placed the complaint given by A-4, and the case was registered on that information. In the said clash, the accused were severely injured. The same Doctor, who treated the prosecution witnesses, has examined and treated the accused, and wound certificates in that regard have been filed. No one of the witnesses have spoken about the injuries on the accused or the manner in which they were caused. The non-explanation of such grievous injuries and the injuries on the vital parts of the body has very much affected the prosecution case. All the witnesses have deliberately suppressed the injuries on the accused, which would be sufficient to reject the prosecution case. The report of A-4 has not been investigated properly by the respondent police. There was an inordinate delay in lodging the F.I.R. But, the prosecution has not

explained the delay in any way. It is pertinent to note that the complaint was lodged after 14 ½ hours, that too when the distance from the place of occurrence to the Police Station was just 3 kilometers. The medical evidence has not at all supported the case of the prosecution, since all the prosecution witnesses have uniformly deposed that A-2 attacked the deceased number of times with M.O.1 chisel on his head. But, P.W.13 Doctor has categorically deposed that the injuries on the head could not have been caused by a weapon like M.O.1. It is pertinent to note that all the witnesses have stated that M.O.1 was not the chisel used by A-2 at the time of occurrence. But, the prosecution has produced the same stating that it was recovered on the confession of A-2, and hence, the said piece of evidence has got to be rejected in toto. The lower Court has acquitted A-4 and A-5 in respect of the charges levelled against them. In order to bring the case for unlawful assembly and rioting, those two accused were deliberately added in the case. While the lower Court has rejected the evidence of the eyewitnesses implicating A-4 and A-5, it should have rejected the evidence in respect of the other accused also. Thus, the prosecution has not proved its case beyond reasonable doubt, and hence, all the appellants should be acquitted of the charges by setting aside the judgment of the lower court.

10. In his reply to the above contentions, the learned Additional Public Prosecutor made the following submissions. It is true that all the eyewitnesses were interrelated and were also related to the deceased. But, on that ground their evidence cannot be rejected, since they have given a consistent and cogent evidence. All the eyewitnesses have given categorical narration of the overt acts including that of A-2, who attacked the deceased with chisel. It is pertinent to note that the said chisel was recovered by the in vestigation agency pursuant to a confessional statement given by A-2, in the presence of the witnesses, and the said chisel is marked as M.O.1. The prosecution has adduced the medical evidence, which has fully corroborated the testimonies of the eyewitnesses. It is not correct to state that the prosecution has not explained the delay. The occurrence has taken place at 8.30 P.M. All the eyewitnesses took the grievously injured Karthikeyan to the Jipmer Hospital, Pondicherry in order to save his life and were to stay necessarily. In the next morning, P.W.1 has gone to the Police Station and gave Ex.P1 complaint, and thus, there was no delay. It remains to be stated that A-4 has given the complaint only after the arrest by the police, and this would indicate that the accused were the aggressors. The prosecution witnesses during the cross examination have well stated that A-1 and A-2 were injured at the time of the occurrence, and hence, it cannot be stated by the appellants' side that the injuries on the accused were not explained. The lower court after careful scrutiny of the available evidence, has rightly found A-1 to A-3 guilty and sentenced them. Hence, the judgment of the lower court has got to be sustained, and the appeal be dismissed.
11. In order to prove the case, the prosecution has mainly relied on the direct evidence adduced through P.Ws.1 to 6, who according to the prosecution are eyewitness. Admittedly, P.Ws.1 to 6 are interrelated and closely related to the deceased also. From the evidence of P.W.6, it would be clear that she did not witness the occurrence. The fact that there was a fence dispute between the families of P.W.4 and A-4, and there were often quarrels between the families as spoken to by P.W.7 Panchayat President, is

not denied by the appellants. But, as could be seen from the evidence, that was not the immediate motive for the occurrence. According to P.W.4, there was a wordy quarrel between her daughter P.W.6 and A-5 regarding taking water in a tap, and even after returning home, A-5 continued to shout, and following the same, the occurrence took place. But, P.W.6 has not spoken anything about the said incident. According to the prosecution, there was a long pending fence dispute between the families of A-4 and P.W.4. According to P.W.4, at the time of occurrence, A-1 and A-2 removed the fence and trespassed into the house. But, the said fact is not averred in Ex.P1 complaint. P.W.4 has deposed that immediately after making such entry, A-2 beat her with a chappal, and P.Ws.1 and 3 have also stated so. It is pertinent to note that Ex.P1 complaint does not whisper anything in that regard. Had an incident like beating with chappal actually been taken place, it should have found place in the first information.

12. Heavily relying on the evidence of the eyewitnesses, the prosecution contended that they have consistently spoken to the fact that A-2 attacked the deceased with M.O.1 chisel on his head number of times, and the said attack was the cause for his death. P.W.15 the Investigation Officer has deposed that he arrested A-1 to A-3 on 9.1.1992; and that A-2 gave a confessional statement in the presence of witnesses, and pursuant to the same, A-2 produced M.O.1 chisel, M.O.7 reaper and M.O.8 (series) Mundiri sticks and wooden stick, which were recovered under Ex.P19 mahazar. The prosecution has also examined P.W.14 who has stated that the confessional statement of A-2 was recorded in his presence, and A-2 has also produced the said material objects, including M.O.1 chisel in his presence, which were recovered under Ex.P19 mahazar. Significant it is to note that all the eyewitnesses have categorically deposed that M.O.1 was not the chisel used by A-2 at the time of occurrence. Hence, it casts a doubt whether M.O.1 chisel could have been planted to suit the overt act attributed to A-2. At this juncture, it has also to be pointed out that as rightly pointed out by the learned Counsel for the appellants, the medical evidence does not corroborate the ocular evidence. It is crystal clear from the evidence of the eyewitnesses that A-2 gave number of stabs on the head of the deceased. Ex.P8 postmortem certificate would reveal that there were 14 external injuries on the body of the deceased, out of which four lacerated injuries were found on the scalp. P.W.12 Doctor through whom the said postmortem certificate has been marked, has opined even in the chief examination that the external injuries 1 to 4 and internal injury found in column No.9 of Ex.P8 were not possible by a weapon like M.O.1.

13. The alleged occurrence has taken place at about 8.30 P.M. on 3.1 .1992. The body of the deceased Karthikeyan was taken to Jipmer Hospital, Pondicherry, and Karthikeyan was declared dead at about 10.20 P.M. by Dr.Ananth, whose handwriting was known by P.W.13 Doctor, and the injured witnesses have also been examined by the Doctor within an hour or two. But, a case was registered only at 11.00 A.M. on 4.1.19 92, i.e., after 14 hours from the time of occurrence. It has to be noted that Kottakuppam Aurovil Police Station is situate only 3 kilometers away from the place of occurrence. The prosecution has not tendered any explanation as to the said inordinate delay in any manner. It is admitted by the prosecution witnesses that there are number of houses around the site of incident, and the occurrence was witnessed by number of persons. While so, it is high ly surprising to note that the prosecution has chosen to examine P.Ws.1 to 6, who are all closely

interrelated to each other and to the deceased also. In the instant case, the prosecution has not come forward to examine any one of the independent witnesses, though available. With a view to satisfy the judicial conscience, this Court perused the evidence of the said witnesses and is of the considered view tha t their evidence does not inspire the confidence of the court. The testimonies of the eyewitnesses can be taken into account, provided they are cogent and consistent. In the instant case, it has to be necessarily stated that all the eyewitnesses are interested, and their evidence is discrepant.

14. Admittedly A-4 has lodged a complaint before the same police stating the attack of the prosecution party and the injuries sustained by A-1 to A-3 and A-5. According to P.W.13 Doctor, on 3.1.1992 at about 10.15 P.M., Dr.Ananth, who examined the prosecution witnesses, has also examined A-1 and has found the injuries as stated below.

"1. Laceration 5 cm over the left frontal parietal region.
2. 3 cm laceration over the occipital region near vertex.
3. Theder swelling over the left thumb and elbow."

The case sheet of A-1 was marked as Ex.D1. The said Doctor has examined A-2 at about 10.30 P.M. and has found the injuries as follows:

"1. Lacerated wound 6 cm over the midline scalp anteriorly.
2. Laceration 1.5 cm long bone deep over the left parietal region.
3. Multiple abrasions over right forearm.
4. Tendeness over the right shoulder."

The case sheet of A-2 was marked as Ex.D2. Both A-1 and A-2 have informed to the Doctor that those injuries were caused by known persons at about 8.30 P.M. on 3.1.1992 at their residence. It remains to be stated that no one of the eyewitnesses has spoken anything about the injuries that were caused to the said accuse d at the time and in the course of the said transaction. The learned Additional Public Prosecutor brought to the notice of the Court that P.W.5 has stated that A-1 and A-2 sustained bleeding injuries at the time of the occurrence. But, this cannot be taken as an explanation as to how and the manner in which the accused sustained injuries at the time of the occurrence. Normally the non explanation of the injuries by the prosecution may not affect its case, if the injuries sustained by the accused are minor and superficial, and the evidence adduced by the prosecution was clear and cogent, independent and disinterested, consistent, trustworthy and remains in such a way that it would not outweigh the effect of the omissions on the part of the prosecution to explain the injuries. As stated above, all the eyewitnesses examined by the prosecution are interested and interrelated, who have deliberately suppressed a part of the occurrence, in which the accused were assaulted resulting in those injuries. Under the circumstances, the Court has to necessarily draw adverse inference, in view of the non- explanation of the injuries on the person of the accused, and hold that it has widely affected the prosecution case.

15. Though it is admitted by the Investigation Officer that the case was registered in Crime No.5/92 on the strength of the complaint given by A-4, and investigation was also proceeded, the F.I.R. and the records pertaining to the said case were not placed in the hands of the trial Court. It is not the case of the prosecution that the occurrence leading to the registration of a case in Crime No.5/92 against the prosecution witnesses, was an independent and separate one from the occurrence in question. That apart, a reading of Exs.D6 and D7, the complaint and the printed F.I.R. respectively, would also

indicate that the occurrence referred to therein has also taken place at the time and the place of occurrence as alleged by the prosecution in the instant case. In view of the failure on the part of the prosecution to prove the motive, interested and unreliable evidence of the eyewitnesses not corroborated by the medical evidence, inordinate and unexplained delay in the registration of the case, non-explanation of the injuries found on the accused and the infirmities noticed, it was clear that the prosecution has miserably failed to prove the case against the appellants beyond reasonable doubt. Under the stated circumstances, it would be highly unsafe to hold that the accused are guilty in respect of the charges levelled against them. Therefore, the judgment of the lower court has got to be set aside, and the appellants be acquitted of the charges.

16. In the result, this criminal appeal is allowed, setting aside the judgment of the court below. The appellants are acquitted of the charges. The bail bonds executed by the appellants, if any, shall stand cancelled.

Index: Yes
Internet: Yes
To:
1. The Sessions Judge, Vizhupuram, V.R.P. District.
2. The District Collector, Vizhupuram, V.R.P. District.
3. The Director General of Police, Chennai 4.
4. The Superintendent, Central Prison, Vellore.
5. The Public Prosecutor, Madras.
6. The Judicial Magistrate, Vanur.
7. The Judicial Magistrate, Vanur,
Through The Chief Judicial Magistrate, Vizhupuram,
V.R.P. District.
8. The Inspector of Police, Kottakuppam Aurovil Police
Station, VRP District.
nsv/
P.SHANMUGAM, J.
AND
M.CHOCKALINGAM, J.